

Williams, Kastner & Gibbs PLLC

LAW FIRM

Judith A. Endejan
Attorney at Law
(206) 233-2998
jendejan@wkg.com

Two Union Square
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
P.O. Box 21926
Seattle, Washington 98111-3926
Telephone (206) 628-6600
FAX (206) 628-6611

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VIA FEDERAL EXPRESS

Secretary
Federal Communications Commission
445 - 12th Street S.W. TW-A325
Washington, D.C. 20554

Re: CC Docket 96-45

Dear Secretary:

Enclosed please find for filing an original and 4 copies of the Comments of United States Cellular Corporation in Response to Order and Further Notice of Proposed Rulemaking Released August 31, 2000. We have also filed these comments electronically today. We are enclosing an additional copy and self-addressed, stamped envelope. We would appreciate it if you would return this copy to us with an indication the document has been filed.

Please contact me at (206) 233-2998 if you have any questions or comments. Thank you.

Very truly yours,

WILLIAMS, KASTNER & GIBBS PLLC



Judith A. Endejan

END:ks
Enclosures

cc: Peter M. Connolly (w/encl.)
Mary Davis, U.S. Cellular (w/encl.)

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**Federal Communications Commission**

**The FCC Acknowledges Receipt of Comments From ...
United States Cellular Corporation
...and Thank You for Your Comments**

Your Confirmation Number is: '20001012283708 ' 1

Date Received: Oct 12 2000

Docket: 96-45

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Federal-State Joint Board on Universal Service;
Promoting Deployment and Subscribership in
Unserved and Underserved Areas, Including
Tribal and Insular Areas

CC DOCKET 96-45

COMMENTS OF UNITED STATES
CELLULAR CORPORATION IN RESPONSE
TO ORDER AND FURTHER NOTICE OF
PROPOSED RULEMAKING RELEASED
AUGUST 31, 2000

I. INTRODUCTION AND SUMMARY OF POSITION

United States Cellular Corporation ("USCC") submits these comments in response to the Order and Further Notice of Proposed Rulemaking released August 31, 2000 (FCC 00-332) in this docket ("August 31 Order"). The Federal Communications Commission ("FCC" or "Commission") called for comments on how to "define geographic areas that are adjacent to the reservations" to implement an enhanced Lifeline and Link Up program targeted to support "the most underserved areas of our nation." *Id.* at Par. 1. In the Twelfth Report and Order in this docket,¹ the Commission adopted measures to promote telecommunications infrastructure deployment and subscribership on Tribal lands, including both Indian reservations and Alaskan native lands. The Twelfth Report and Order enhanced currently available federal sources of financial assistance to low income telephone subscribers by increasing the amount of assistance for the federal Lifeline assistance program up to \$32.85, depending on various factors such as state matching. The Twelfth Report and Order also increased the federal assistance available for

¹ Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Report and Order*, CC Docket No. 96-45, FCC 00-208 (adopted June 8, 2000, released June 30, 2000).

the costs of initiating service provided under the current Link Up program by \$70 to a total of \$100 per customer.

Eligibility for enhanced Lifeline and Link Up support according to the Twelfth Report and Order was to be determined on the basis of where eligible (Indian and non-Indian) participants reside. They must reside on Tribal lands or “near reservation lands.” However, the August 31 Order stayed the implementation of the Twelfth Report and Order to the extent the order included qualifying low income consumers living “near reservation lands.” On its own initiative the Commission issued this stay because it realized that expanding eligibility on the basis of residency on “near reservation lands”, as currently defined by the Bureau of Indian Affairs (“BIA”) may encompass geographic areas “that do not possess the characteristics that warranted the targeting of enhanced Lifeline and Link Up support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership.” August 31 Order, Par. 3.

USCC advocates retention of the “near reservation lands” eligibility criteria, as adopted in the Twelfth Report and Order as a starting point. Geographic areas which lack the characteristics which warrant targeted enhanced Lifeline/Link Up can be excluded by using objective criteria such as Consolidated Metropolitan Statistical Area (“CMSA”) designations which could describe areas that do not have low telephone subscribership or geographic isolation, two of the three characteristics of concern to the Commission.

USCC’s perspective is unique because it is one of the first wireless carriers to be granted eligible telecommunications carrier (“ETC”) status. USCC and its licensee subsidiaries in Washington State received ETC designation in the state of Washington from the Washington Utilities and Transportation Commission for 81 exchanges in USCC’s FCC-designated service areas, pursuant to the Second Supplemental Order Granting Designation as Eligible Telecommunications Carrier in Docket No. UT-970345 (December 30, 1999). As a result of its ETC designation USCC must provide Lifeline and Link Up service offerings in Washington. It

has submitted the requisite certification called for by the Twelfth Report and Order, Par. 65, to the Universal Service Administrative Company ("USAC") to establish entitlement for reimbursement for enhanced Lifeline and expanded Link Up services. These services will be provided once USCC receives certification of its Lifeline program from USAC.

USCC would not have sought an ETC designation in Washington unless it believed that wireless carriers can play a valuable role in furthering state and federal universal service goals. As the Commission has noted, wireless carriers may be important to furthering the Commission's goal of promoting the deployment of telecommunications infrastructure in underserved areas, such as Tribal lands.² Given its decision to seek a leading role in the universal service arena, USCC's approach towards the targeting of enhanced Lifeline and Link Up support would err in favor of including qualified low income customers with some connection to Tribal lands, rather than excluding them on some arbitrary geographic basis. This means that the Commission should return as much as possible to a "near reservation lands" approach to eligibility.

II. ARGUMENTS AND ANALYSIS

A. Washington State has many "near reservation" areas which are isolated, impoverished and underserved.

While USCC recognizes that the Commission wants to establish national criteria for enhanced Lifeline/Link Up eligibility, Washington State provides a good example of why the "near reservation lands" criteria should be retained. It is also the state of most immediate concern to USCC because it is the only state where USCC has Lifeline obligations due to its ETC status.

Washington is a geographically diverse state with many remote, mountainous or desert areas. The Cascade Mountain range bifurcates the state. The eastern side of the range is

² See the companion order to the Twelfth Report and Order: In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order*. WT Docket No. 99-266, FCC 00-209 (adopted June 8, 2000, released June 30, 2000) at Pars. 1, 4, 5.

primarily rural. The western side contains the populous, urbanized Puget Sound region, but becomes rural along the Pacific Ocean and Olympic Mountain range area.

Like most western states, Washington State (with 28 federally recognized Indian Tribes) contains quite a few Indian reservation lands and “near reservation lands”. Pursuant to 25 C.F.R. § 20.1(r) the BIA has designated “near reservation lands” as including 24 of Washington’s 39 counties. These are: Whatcom, Skagit, Snohomish, King, Kitsap, Pierce, Mason, Thurston, Grays Harbor, Jefferson, Lewis, Cowlitz, Pacific, Klickitat, Skamania, Pend Oreille, Stevens, Spokane, Lincoln, Ferry, Yakima, Okanogan, Douglas and Clallam.

With the exception of Snohomish, King, Kitsap, Pierce and Thurston Counties, which ring the Puget Sound, the other counties with “near reservation” status have characteristics of geographic isolation, in whole or in part, with high rates of poverty, which has a correlation to low telephone subscribership levels.³ For instance, in ten of the counties over a quarter of the population uses social services provided by the Washington Department of Social and Health Services.⁴

B. The “Near Reservation” definition draws the most useful boundary for enhanced Lifeline eligibility.

The definition of “near reservation” in the BIA’s regulations establishes the geographic criteria used to reasonably cover Indians entitled to federal financial assistance and social services programs. 25 C.F.R. § 20.1(r) states:

Near reservation means those areas or communities adjacent or contiguous to reservations which are designated by the Commissioner upon recommendation of the local Bureau Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as:

³ Telephone penetration rates are not broken down by county, but are reported on a state basis, so it is difficult to quantify actual penetration rates at the county level. See Telephone Penetration by Income by State, posted on the FCC web-site.

⁴ Source: DSHS County Data Report FY 94, published by the Washington Department of Social and Health Services.

- (1) Number of Indian people native to the reservation residing in the area,
- (2) a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation,
- (3) geographical proximity of the area to the reservation, and
- (4) administrative feasibility of providing an adequate level of services to the area.

The Commission shall designate each area and publish the designations in the Federal Register.

The “near reservation” definition is useful because it helps locate the true “Indian country” which the Commission’s Indian initiatives have targeted⁵ in orders such as the Twelfth Report and Order. Efforts targeted to providing assistance to Indians cannot be confined to reservations because eligible Indians may migrate off the reservation for any number of social or economic reasons. See Morten v. Ruiz, 415 U.S. 199 (1974). Thus, at the very least, the Commission should not restrict eligibility for enhanced Lifeline/Link Up to reservation residents. To do so would inevitably exclude a large population which the Commission would want to target. This population also includes low-income, non-Indians who reside in areas with the characteristics of geographic isolation, low telephone subscribership and a lack of telecommunications infrastructure, which are the attributes of Tribal lands identified by the Commission as of concern so as to warrant enhanced Lifeline subsidies.

The difficulty with strictly applying a “near reservation” approach is that this definition was intended to apply to a narrow population — Indians. The Commission’s purpose in the Twelfth Report and Order is broader — to target all low-income subscribers (Indian and non-Indian) in underserved, geographically isolated areas with an emphasis on serving Tribal lands. Yet, the “near reservation” approach is the best way to define those Tribal lands which go beyond reservation boundaries and it will enhance the likelihood of reaching Indian subscribers.

⁵ See the FCC’s description of its Indian Initiative at <http://www.Fcc.gov/indians/>.

The “near reservation” definition carries a presumption that the characteristics of concern to the Commission (i.e., underserved Tribal members, geographic isolation) are present.

While the BIA definition of “near reservation” may not be the most precise tool for targeting isolated impoverished and underserved areas for universal service purposes, it is the best starting point to ensure that the true targets of the Commission’s efforts are included, rather than inadvertently excluded.

- C. The BIA definition could be modified to address the Commission’s concerns and provides the most administratively useful tool.

The BIA definition of “near reservation” also provides the most administratively feasible means for locating eligible customers for wireless carriers. Wireless coverage areas do not correlate precisely with wireline local exchange boundaries. Therefore, USCC could not make the necessary eligibility determination on the basis of local exchange areas within or without reservations. County lines provide the most practical demarcation point.

USCC recognizes the Commission’s concerns about making enhanced Lifeline and Link Up available in areas with high subscribership levels. This concern can be addressed by narrowly carving out those counties with high subscribership levels. Typically this would include heavily urbanized counties. The federal Office of Management and Budget has established criteria for defining such areas. A “Metropolitan Statistical Area” (“MSA”) is a relatively free standing metropolitan area which is not closely associated with any other metropolitan area, typically surrounded by non-metropolitan counties. A “Primary Metropolitan Statistical Area” (“PMSA”) is a large urbanized county or cluster of counties that demonstrate very strong internal economic and social links. These can be blended into a larger area called a “Consolidated Metropolitan Statistical Area.” (“CMSA”). USCC would recommend excluding counties which fall into the CMSA type. In Washington State this would exclude the counties of Kitsap, Thurston, Island, King, Snohomish and Pierce, which ring the greater Puget Sound region and contain the cities of Seattle, Tacoma, Bremerton, Olympia, Everett and Bellevue.

Telephone subscribership and infrastructure deployment in these heavily urbanized counties could be expected to be relatively high. Therefore, the Commission's targeted Lifeline efforts might not be as necessary to promote universal service goals in those counties as in others.

In contrast the remaining counties of Washington State do not necessarily have high subscribership levels and large urban areas, even though they could contain a city with a substantial population such as Yakima, which is surrounded by large, rural, geographically isolated areas.⁶ These counties should not be excluded if they also fall within the definition of "near reservation" under the BIA's criteria.⁷

In sum, USCC views its approach as the most pragmatic means of furthering the goals of the Twelfth Report and Order, even though some low-income subscribers may not reside in the most isolated or underserved areas in every instance. By carving out major metropolitan areas in a CMSA, the Commission can effectively control any unnecessary depletion of Lifeline/Link Up funds.

III. CONCLUSION

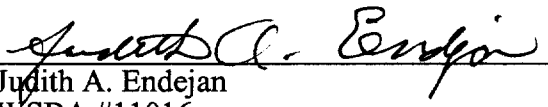
It is difficult to overlay definitions used to determine eligibility for one purpose (i.e. social service assistance for Indians) to determine eligibility for other purposes (i.e., defining underserved, isolated areas). However, in order to ensure that the population the Commission intends to target has the maximum opportunity to receive the benefits of the enhanced Lifeline/Link Up program, the Commission should use the "near reservation" definition. If it wishes to narrow its focus to exclude areas without the qualifying characteristics, the Commission could exclude those counties in a state which would fall within the CMSA category.

⁶ While Yakima County is an MSA, it also contains large rural areas and is the second highest user of DSHS services in the State. See footnote 2.

⁷ Qualifying residents of Yakima county (both Indian and non-Indian) should be eligible because of its clear proximity to the large Yakama Nation.

RESPECTFULLY SUBMITTED this 12th day of October, 2000.

WILLIAMS, KASTNER & GIBBS PLLC

By 
Judith A. Endejan
WSBA #11016

Attorneys For United States Cellular
Corporation

Two Union Square
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600